IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 1379 of 2002

Between:

Sri E.Rikthashi, s/p.Rama Naidu.

..... PETITIONER

AND

1. The Regional Manager, APSRTC,

   Tirupati Region, Chittor District.

2. The Depot Manager, APSRTC, Piler Depot,

   Piler, Chittor District.

.....RESPONDENTs

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or direction especially one in the nature of writ of mandamus declaring that the action of the respondents in issuing proceedings in APSRTC.No.P1/P2/852(2)/98-PLR, dt.18.6.2001 as illegal, arbitrary and discriminatory and against the provisions of persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Counsel for the Petitioner: MR.D.VIJAYA CHANDRA REDDY

Counsel for the Respondents: MR.A.V.SIVAIAH

The Court made the following :

THE HONOURABLE SRI JUSTICE C.V.RAMULU

CONTEMPT CASE NO.1379 OF 2002

ORDER:

This writ petition is filed challenging the office order dated 18.6.2001 passed by the Depot Manager, A.P.State Road Transport Corporation, Pileru Depot of Chittoor District wherein the petitioner was kept on forced leave with effect from 6.3.2000 for a period of one year and he was retired from services of the Corporation with effect from 18.6.2001 on medical grounds.

The petitioner, while in service, was sent for periodical medical checkup and he was declared as visually handicapped. Therefore, he was sent on forced leave pending consideration his alternative employment. One year thereafter, he was retired from services as noticed above. The learned counsel for the petitioner submits that in view of the provisions of Section 47 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Protection) Act, 1995 it is mandatory on the part of the employee to provide an alternative employment to the petitioner. Such a course of action was not adopted and he was sent on forced leave and thereafter he was made to retire from services, which is arbitrary and illegal.

This Court earlier in number of cases examined the provision of Section 47 of the said Act. In a recent judgment reported in ***A.P.STATE ROAD TRANSPORT CORPORATION, HYDERABAD AND OTHERS v M.V.RAMANA RAO*** wherein this Court held that a driver of the Corporation found to be unfit to continue as driver, in view of disability with regard to his sight, cannot be denied alternative employment and it was held as under:

> " Insofar as the applicability of the provisions of Section 47 of the Act to respondent is concerned, there is no challenge made in the appeal. The only challenge made is that respondent has not produced the requisite medical certificate, which point was not taken to contest the claim of respondent in the writ petition and has been taken up for the first time in the appeal.
>
> Having considered the submission made at the Bar, we are of the view that the very basis of the challenge now being made is erroneous inasmuch as in case appellant has taken a decision to dispense with the service of the respondent asking him to go on forced leave on the basis of medical examination of respondent, it was incumbent on the part of the appellant to have obtained the requisite certificate from the same medical authority since it is only the Medical Board which can issue such a certificate of permanent disability or partial disability. Appellant cannot be permitted to blow hot and cold by relying on the said medical certificate for one purpose and denying the said certificate for some other purpose. Learned single judge was justified in observing that provisions of the Act have to be interpreted in a meaningful manner and it will be for the Medical Board to certify a person to be unfit for job and whether the employee suffered disability during the course of his employment or beyond the course of his employment. In the absence of disability certificate stating anything contrary, the disability of the nature like the one, which the respondent got, must be presumed to have taken place during his service only. The very salient principle which must be followed in this case would be that when at the time of initial entry into service an employee who is found to be fit enough to enter the job and suffers any disability during the course of employment, it is for the Medical Board to certify that nature of job being performed by the employee was not such which could have led to such disability or impairment. Learned Single Judge rightly invoked the common sense principle and observed that for Driver getting disability of hearing impairment after he is taken into service will be deemed to have had disability during the course of his employment. In this appeal, we do not find any ground to interfere with the impugned order passed by learned Single Judge and accordingly proceed to dismiss the appeal."

In view of the above, the denial of alternative employment to the petitioner is arbitrary and illegal. The impugned order is hereby set aside and the respondents are directed to provide alternative employment to the petitioner to whichever post he

is eligible within two months from the date of receipt of a copy of this Order.

The writ petition is allowed accordingly. No costs.

24.11.2004.

mdaa.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Wednesday, the 24th day of November, two thousand and four.

COPY TO:

1. The Regional Manager, APSRTC,
   Tirupati Region, Chittor District.
2. The Depot Manager, APSRTC, Piler Depot,
   Piler, Chittor District.

3. Two C.D.copies.